STATE BAR OF MICHIGAN
BLS
BUSINESS LAW SECTION

The Michigan Business Law JOURNAL

Volume 40
Issue 3
Fall 2020

CONTENTS

Section Matters

Columns

Articles

SBM
STATE BAR OF MICHIGAN

Published by THE BUSINESS LAW SECTION, State Bar of Michigan

Shareholder Oppression Litigation – A National Perspective

By Gerard V. Mantese and Fatima M. Bolyea*

"*We despise and abhor the bully, the brawler, the oppressor, whether in private or public life ... .*" Theodore Roosevelt

Introduction and Summary of Findings

In this article, we examine various aspects of shareholder oppression on a national scale, including reviewing more than 15 states' oppression jurisprudence and how Michigan's caselaw fits within this framework. We examine: (1) the conduct that courts typically find to be oppressive, (2) the remedies most commonly awarded upon a finding of oppression, and (3) the propriety of applying a discount to a valuation when a buyout remedy is deemed appropriate.

Methodology

We reviewed caselaw from the country's 15 most populous states: California, Texas, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina, Michigan, New Jersey, Virginia, Washington, Arizona, and Massachusetts. We then sampled cases from other jurisdictions with robust shareholder oppression caselaw, such as Missouri and Oregon. This article presents an overview of findings from these jurisdictions, along with a discussion of Michigan's jurisprudence.

Summary

First, when considering shareholder oppression, courts look to principles of fiduciary duty, including standards of honesty, disclosure, loyalty, and fair play. Courts have held that, among other things, termination of employment, denial of dividends, self-dealing and financial abuse, such as overpaying compensation to oneself, removal of the minority shareholder from positions of management, uneven redemption schemes, and amendment of governing documents with an oppressive result can constitute shareholder oppression.

Second, the more favored remedies for oppression or breach of fiduciary duty are a buyout of the oppressed shareholder's interest or dissolution of the company. In cases where a dissolution is ordered, this allows the defending parties to effectuate a buyout to avoid a dissolution. These remedies provide certainty and peace to warring parties and prevent future litigation. Other remedies may also be ordered.

Lastly, valuation discounts for marketability and minority status are commonly *not* applied when a buyout of the oppressed shareholder is the ordered remedy.

Defining Shareholder Oppression

Certain states, including Michigan and Oregon, apply a definition of "shareholder oppression" pursuant to the "fair dealing" concept of oppression. Other states, such as New York, apply the "reasonable expectations" test of shareholder oppression.[1]

Some states, such as Washington, apply a mix of the two tests depending on the facts of the case.[2] And, Texas rejects both the "fair dealing" test and the "reasonable expectations" test; instead applying a four-factor test of its own, articulated in the 2014 case of *Ritchie v Rupe*.[3]

"Shareholder Oppression" Pursuant to "Fair Dealing" Test

Although the definition of "shareholder oppression" pursuant to the "fair dealing" test differs slightly from state to state, generally, shareholder oppression means conduct by individuals in control of the company which, when viewed objectively, departs from the standards of fair play and good faith that are inherent in every fiduciary relationship.[4] "Oppression" suggests harsh, burdensome, dishonest, or wrongful conduct, or a visible departure from the standards of fair dealing.[5]

The term "oppression" is broad, and covers a myriad of behaviors and situations, including conduct which is neither "fraudulent" nor "illegal."[6] Shareholder oppression under this standard is often measured by an

*The authors would like to thank Brian Markham for his research and assistance on this article. Mr. Markham is a third-year student at Wayne State University Law School and upon graduation will be joining Mantese Honigman, PC as an associate attorney.

analysis of the fiduciary duties owed by majority shareholders and others in control of a company to minority shareholders.[7]

"Shareholder Oppression" Pursuant to the "Reasonable Expectations" Test

States that use a "reasonable expectations" test generally apply a version of the following analysis: shareholder oppression arises when a minority shareholder's expectations, which were (1) reasonable under the circumstances and (2) central to the minority shareholder's purpose for joining the venture; and (3) which the majority knew or should have known about; were (4) frustrated by the majority.[8] Generally, the complaining shareholder must also show that this frustration of his expectations (5) was not the product of his own fault, and that the specific circumstances (6) warrant some form of equitable relief.[9]

Michigan's Test: Fair Dealing

Michigan follows the "fair dealing" test.[10] Under *Frank v Linkner*, Michigan does not require financial harm to be an essential element to prove oppression.[11]

Michigan courts have squarely rejected the "reasonable expectations" test, citing the existence and applicability of Michigan's shareholder oppression statute, MCL 450.1489. In *Franchino v Franchino*, the Michigan Court of Appeals rejected the "plaintiff's invitation to define the term 'oppression' to include 'conduct that defeats the reasonable expectations of a minority shareholder,'" reasoning that a reasonable expectations approach that "places the focus on the rights or interests of a minority shareholder would be inconsistent with a statute like MCL 450.1489 which places the focus on the actions of the majority."[12]

A few years later, in *Trapp v Vollmer*, the Court of Appeals again rejected the reasonable expectations test, this time declining to find that the post-*Franchino* amendments to MCL 450.1489 negated the *Franchino* ruling regarding the reasonable expectations test.[13]

The Role of Fiduciary Duties in Shareholder Oppression Cases

Many states recognize that controlling shareholders in close corporations owe fiduciary duties to minority shareholders, including "duties of loyalty, good faith, fair dealing, and full disclosure."[14] Courts that consider the shareholder oppression issue have held that "allegations of oppressive conduct are analyzed in terms of fiduciary duties owed by directors or controlling shareholders to minority shareholders."[15] As such, conduct that violates fiduciary duties in a closely held corporation is also likely to be considered "oppressive."[16]

Analyzing shareholder oppression through the prism of fiduciary duties permits abused shareholders and courts to harness centuries of fiduciary caselaw. As Justice Cardozo famously pronounced in *Meinhard v Salmon*, when harkening to the "unbending and inveterate" tradition of fiduciary law:

> Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.[17]

Thus, when examining conduct of corporate directors and officers and others in control of an entity, it is important to judge their acts in light of high and strict fiduciary duties. Conduct that might be permitted by the morals of the marketplace are not tolerated of fiduciaries.

[W]hen considering shareholder oppression, courts look to principles of fiduciary duty, including standards of honesty, disclosure, loyalty, and fair play.

Types of Conduct Found to be Oppressive

Irrespective of the test used to gauge oppression, certain recurring fact patterns tend to emerge as inequitable and oppressive conduct. The following actions are generally considered to be oppressive:

Awarding Those in Control Excessive Compensation. Excessive compensation is a hallmark of oppressive conduct, especially when coupled with self-dealing and failure to pay dividends. In *Baron v Pritzker*,[18] for example, a breach of fiduciary duty claim sounding in shareholder oppression survived defendant's motion to dismiss where the plaintiff minority shareholder pled that the majority shareholder froze plaintiff out of management, cut his compensation, and paid himself excessive compensation.[19]

Self-Dealing or Misapplication of Corporate Funds. As with inflated compensation, self-dealing and interested transactions

by those in control will also raise red flags in oppression litigation.

In *Meyer v Brubaker*,[20] oppression was found where majority shareholders personally cashed checks made out to the company; used company funds for automobiles and to repay loans they made to the business in disproportionately larger amounts than used to repay loans made by minority shareholders; overcompensated themselves; refused to pay distributions; and lied about the company's financial health. The court ultimately granted dissolution of the company, along with compensatory and punitive damages.

Likewise, in *Twin Bay v Kasian*,[21] shareholder oppression was found where the majority shareholders held annual meetings without notice; awarded themselves annual bonuses not contingent on performance; issued shares to themselves at a depressed price and without paying for them; amended the by-laws with an oppressive result for the minority shareholders; forced minority shareholders to sell their shares at less than fair value; and moved company cash into personal bank accounts. Among other things, the court ordered that the company be dissolved.

As in Michigan's *Magudula v Taub*, many states hold that a claim for oppression is an equitable claim, which allows courts to use their vast equitable powers.

Failure to Pay Dividends. Furnishing of inadequate or no dividends is also widely considered oppressive, as the receipt of dividends is a fundamental aspect of shareholder status. As explained by the Michigan Supreme Court in *Dodge v Ford Motor Co* in holding that Ford's refusal to issue dividends was actionable: "a business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end."[22] The Oregon Court of Appeals agreed, holding that: "withholding of dividends or other return on one's participation in a business enterprise is an *essential* part of most squeeze-out efforts."[23] This is particularly problematic where the control group prevents the company from paying dividends despite its ability to do so without harming the corporation.[24]

Termination of Employment with the Company. Courts often find termination of employment with the company to be oppressive because "a person who buys a minority interest in a close corporation does so, not only in the hope of enjoying an increase in the value of the shareholder's stake in the business, but for the assurance of employment in the business in a managerial position."[25] Indeed, if the company is not issuing dividends, receipt of a salary via employment in the company may be the sole way in which an employee receives an economic return from the company.[26] As such, cutting off employment to a minority shareholder can be oppressive, especially when those in control retain employment and thereby receive, in effect, "disguised dividends." Therefore, in *Riggle v Seaboard Envelope Co, Inc*, the court found oppression and ordered dissolution where the majority shareholder: terminated the minority shareholder's employment and denied him access to company facilities; fired his children; and ceased compensating him.[27] Additionally, in *Gallagher v McKinnon*, the court found oppression where the majority shareholder removed the minority shareholder as secretary of the company, demoted his employment, reduced his salary, ultimately terminated his employment, and issued himself additional shares of stock to give himself the controlling interest in the company.[28]

Freeze-Out of the Shareholder from the Company. As explained by the Mississippi Court of Appeals, "the ability of majority shareholders to 'squeeze out' or 'freeze out' minority shareholders through various tactics…contributes to the minority shareholder's vulnerability" in a close corporation.[29] Freeze-out tactics may include conduct discussed throughout this article, such as termination, lock out from company facilities, excluding the shareholder from operating the company, and failing to disclose information to the minority shareholder.[30]

Locking the Shareholder Out of Company Premises. Part of a majority shareholders' freeze-out technique may be to literally "lock" a minority shareholder out of the company's physical or virtual premises. This includes changing locks on the company's buildings, changing computer passwords, and removing shareholder access to the company's bank accounts. Such conduct has been found to be oppressive, especially when coupled with other freeze-out actions such as termination and refusal to provide information.[31]

Failure to Provide Information or Access to Company Records. A vital shareholder right is the right to remain informed about the company. Many states' statutes protect this right, including Michigan's MCL 450.1487. Courts have held that failure to provide such information to minority shareholders constitutes shareholder oppression.[32]

Unfair, Disproportionate, or Discounted Redemption Scheme or Buyback. Shareholder oppression may occur where those in control attempt to acquire a minority shareholder's shares at a deep discount. In *Twin Bay*,[33] the court found oppression where the majority shareholders forced the minority shareholders to accept a buyout of their shares at below fair value. Adding to the oppression there, the control group utilized a bylaw provision against the minority shareholders to force the buyout, but had not used the provision against a member of the control group when that member had been in a similar situation, thus treating the minority disproportionately.

In *Royals v Piedmont Elec Repair Co*,[34] oppression was found and dissolution of the company ordered where the minority shareholder sought to sell his shares but the majority shareholders offered to purchase them for less than half their value, and then terminated his employment. The court explained:

> PERCO has refused to offer fair market value for Glenn's shares (or any other minority shareholder's shares for that matter). In fact, PERCO essentially continues to hold these shares captive, forcing the minority shareholders to either redeem them for significantly less than market value or hold on to them until the majority shareholders decide to dissolve the company.[35]

In *Keating v Keating*,[36] shareholder oppression was found where the majority shareholder terminated the minority shareholder's employment, ceased providing him compensation from the company, and offered him a buyout of his interest at a discounted rate. The court ordered a buyout of the minority's shares.

Removal of the Shareholder from Positions of Management. Shareholder oppression may include removal or exclusion of a minority shareholder from management positions. This is because, "[i]n addition to the security of long-term employment and the prospect of financial return in the form of salary, the [shareholder] expectation includes a voice in the operation and management of the business and the formulation of its plans for future development."[37] This is particularly true where the minority shareholder was previously in management, and was then removed by the majority shareholders for some specific reason or seemingly no reason.[38] For example, in *Hager-Freeman v Spircoff*, the plaintiff sufficiently alleged shareholder oppression where the defendants refused to hold meetings of shareholders or directors, the minority shareholder was removed as a director and employee, and deprived of an opportunity to participate in management and business decisions.[39]

Amendment of the Bylaws or Governing Documents. Those in control cannot amend the company's bylaws or governing documents in a way that oppresses or targets the minority. In *Bromley v Bromley*,[40] the oppressing majority shareholders allegedly undertook all of their challenged actions (including amending company bylaws to change the number of directors to remove plaintiffs from the board) pursuant to the company's governing documents. Nonetheless, the court found evidence of oppression, holding that, "the circumstances surrounding the [bylaws] amendments look suspiciously like a corporate freeze-out … . Individually, the amendments are legal, yet collectively they could be used oppressively. This substantially affects Plaintiffs' rights as shareholders."[41] This and other cases teach that having a general grant of authority, even in a company's governing documents, does not authorize the party in control to abuse its authority and commit oppression.[42]

What Is the Most Common Remedy Upon a Finding of Oppression?

As in Michigan's *Madugula v Taub*,[43] many states hold that a claim for oppression is an equitable claim, which allows courts to use their vast equitable powers. Thus, once shareholder oppression is found, courts generally have broad discretion to fashion an appropriate remedy. Indeed, scholars and courts consider that the "breadth of remedies for shareholder oppression provides the courts with great flexibility to choose a remedial scheme that most appropriately responds to the aggrieved shareholder's harm."[44] This has become particularly true with the implementation of oppression statutes, which courts see as "intended to *expand* the shareholder remedies."[45]

The remedy of a stock buyback appears to be the most frequently ordered remedy where shareholder oppression or breach of majority shareholders' fiduciary duties is found.[46] (This includes the similar, although more drastic remedy of dissolution, which courts are increasingly willing to order to

The remedy of a stock buyback appears to be the most frequently ordered remedy where shareholder oppression or breach of majority shareholders' fiduciary duties is found.

terminate an untenable situation. Of course, the oppressing parties are in a position to avoid dissolution by effectuating a buy-out and this is a common scenario in New York, for example.) In *Meiselman v Meiselman,* the court spent significant time discussing various state statutes, cases, and commentary espousing the benefit of total dissolution rather than forcing oppressed shareholders to remain in continued contact with their oppressors.[47]

Courts have articulated the following rationales for ordering a buyout of oppressed shareholders:

Maintaining the status quo between hostile shareholders is unsustainable and could lead to continued conflict, oppression, and further litigation. "Stagnation or maintenance of the *status quo* will ill-satisfy the expectations of the minority investor, and, if the majority investor wants to keep things as they are, he may do so by buying out his brother, making him sole owner of the properties. To continue to permit the *status quo* to exist … would serve neither of the litigants in this matter."[48]

[T]he majority of courts are inclined to reject applying discounts when the oppressing shareholder is ordered to buy out the oppressed shareholder.

A buyout resolves the instant conflict, maximizes the benefit to both parties, and preserves a viable business as a going concern. "The buy-out of one co-owner by the other seems to me to present the greatest possibilities of resolving this matter in the near future, of maximizing the benefit to both parties, and in preserving [the company] and its business to the greatest extent possible."[49]

An oppressed shareholder cannot escape an oppressive situation by selling his or her shares in a public market. "In a closely held corporation, such as this one, 'a shareholder ... is unable to escape an oppressive situation by dispensing of his shares of ownership in the public arena."[50]

Other remedies for shareholder oppression and breach of fiduciary duty in this context imposed by courts across the country include:

(1) **compensatory damages** (e.g., as compensation for breach of fiduciary duty, lost wages, or loss of value of interest in the company),

(2) **rescission** of the oppressive transaction or action (e.g., undoing issuance of shares or bylaws amendments),

(3) **punitive damages**, and

(4**)** other **equitable relief** (e.g., restoring employment, rehabilitative receivership).

Please see endnote 52 for a compendium of caselaw discussing various remedies by state.[51]

Do Courts Apply Minority and Marketability Discounts to the Valuation of a Minority Shareholder's Interest?

When courts order a buy-out remedy for oppressive conduct, the method by which the minority shareholder's interest is to be valued is often disputed. Specifically, should the valuation be discounted due to the shares' minority status or lack of marketability? Most courts say no.

Courts acknowledge that they have discretion to determine whether to apply discounts, and they are generally hesitant to issue a universal dictate that discounts can *never* be applied. Indeed, courts often note that discounts may be appropriate where equity requires it (for example, if the oppressed shareholder is buying out the oppressor) or in exceptional circumstances. Beyond this, the majority of courts are inclined to *reject* applying discounts where the oppressing shareholder is buying out the oppressed shareholder. This is especially so with respect to minority control discounts, but it is also the prevailing rule for marketability discounts.[52]

Courts have offered the following justifications for rejecting the application of discounts:

1. **The majority shareholder already has control of the corporation, so the minority shares effectively become controlling shares when the majority acquires them**. As explained by leading commentator Professor Douglas Moll:

> When the corporation is the buyer of the minority's shares, a minority discount remains inapposite. Stock repurchased by the corporation is often characterized as 'treasury stock' that is no longer outstanding. The corporation, as an entity, does not become a shareholder that now owns a minority stake in itself. Instead, the effect of the corporation's purchase of its own shares is to raise the percentage ownership of the remaining shareholders. The control already possessed by a majority shareholder, in other words, simply increases as a result of the corporation's purchase.[53]

2. **Discounts deprive minority shareholders of their proportionate interest in a going concern.**[54] As explained by one court in discussing the inappropriateness of discounts: "had the corporation then been dissolved, it is clear that upon distribution of the dissolution proceeds each of the shareholders would have been entitled to the exact same amount per share, with no consideration being given to whether the shares had been controlling or noncontrolling."[55]
3. **Discounts encourage majority shareholders to manipulate statutory protections for minorities, encourage oppressive behavior, and punish minority shareholders for exercising their statutory rights.** As the North Carolina Business Court explained:

   It would be inequitable under the circumstances of this case to impose a minority discount for lack of control or a discount for lack of marketability of the minority shares. Hilliard made the final decision to change the arrangement under which the business was organized. He had the leverage to do so and the minority shareholders did not … . It would also be inequitable to impose a minority discount where the minority shareholders' loss was more than simply being forced to sell their shares.[56]
4. **Majority shareholders should not receive a windfall for oppressive conduct.** A common consideration in courts' refusal to apply minority and marketability discounts is acknowledgment that doing so would result in a windfall to the oppressing majority shareholders. "The statute clearly does not contemplate such a windfall for majority shareholders, nor should it be interpreted in such a way as to provide an incentive for majority shareholders to oppress minority shareholders and force them to sell."[57]
5. **Majority shareholders who acquire minority shares at a discount can turn around and sell them to a third-party at full value**. Some courts are concerned that:

   the majority shareholders are thus in a position to have the company buy the shares which could then be resold with the majority shares at a value based upon 100% control value. They should not be allowed to buy at a discounted price that which they could immediately turn around and resell at full value. The statute clearly does not contemplate such a windfall for majority shareholders, nor should it be interpreted in such a way as to provide an incentive for majority shareholders to oppress minority shareholders and force them to sell.[58]
6. **Discounts are not appropriate where a sale of the company is not anticipated.** Some courts hold that "a marketability discount … presupposes a probable sale of the stock. If a sale is improbable, the discount need not be applied."[59]
7. **"Fair value" is distinct from "fair market value."** When statutes or cases state that an oppressed or dissenting shareholder's interest shall be valued at "fair value," this is distinct from "fair market value," and must be treated as such.[60] Courts considering the matter have held that "fair value" does *not* include discounts.[61] "'Fair value' means the shares' value at the moment just before the majority committed misconduct. The valuation appropriately reflects the then existing intention of the minority to continue as a participating shareholder. And it should fully compensate the shareholder forced out and avoid giving a windfall to the party committing misconduct."[62]
8. **Unique use of discounts for equitable purposes.** New Jersey courts have, at times, ordered that the *oppressing* majority shareholder will be bought out by the oppressed minority shareholder. In these situations, New Jersey courts have held that equity demands the imposition of a discount *on the majority shareholder's* shares so that the oppressor is not rewarded for his/her conduct. "In cases where the oppressing shareholder instigates the problems, as in this case, fairness dictates that the oppressing shareholder should not benefit at the expense of the oppressed."[63]

Majority shareholders and officers and directors should act in scrupulous compliance with fiduciary duties, and not "use their power to control corporate activities to benefit themselves alone or in a manner detrimental to the minority."

Conclusions

The verdict is in. The consensus in the most populous states is that:

1. Whether a state has an oppression statute, a common law oppression scheme, or handles oppression under fiduciary duty law, the control group's actions are likely to be measured against the fiduciary standard: including the duties of honesty; disclosure; loyalty; and good faith;
2. certain recurring fact patterns constitute oppression: terminating employment, not issuing dividends, overpayment of compensation, uneven redemption schemes, and cutting out a minority from information and involvement (particularly when occurring in combination with other actions such as overcompensating majority owners); and
3. a buyout without discounts is the favored remedy.

Majority shareholders, and officers and directors should act in scrupulous compliance with fiduciary duties, and not "use their power to control corporate activities to benefit themselves alone or in a manner detrimental to the minority."[64] Otherwise, based on our research, those in control may face a redemption of the oppressed shareholders' shares without discounts, damages, or, potentially, even dissolution of the company.

NOTES

1. *Twin Bay v Kasian*, 153 AD3d 998, 1002, 60 NYS3d 560, 565 (2017).

2. *Scott v Trans-Sys, Inc*, 148 Wash 2d 701, 711, 64 P3d 1, 6 (2003).

3. *Ritchie v Rupe*, 443 SW3d 856, 870 (Tex 2014).

4. § 5820.11. Oppressed shareholders—Oppressive conduct defined, 12B Fletcher Cyc. Corp. § 5820.11.

5. *See e.g., Robinson v Lagenbach*, 599 SW3d 167 (Mo 2020) (en banc); § 5820.11. Oppressed shareholders—Oppressive conduct defined, 12B Fletcher Cyc. Corp. § 5820.11; *Gidwitz v Lanzit Corrugated Box Co*, 20 Ill 2d 208, 170 NE2d 131 (1960) (word "oppressive" as used in statute is not synonymous with "illegal" and "fraudulent" and does not require mismanagement or misapplication of funds); *Baker v Commercial Body Builders, Inc*, 264 Or 614, 628–29, 507 P2d 387, 393 (1973) (oppression defined as "burdensome, harsh and wrongful conduct; a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members; or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely."); *White v Perkins*, 213 Va 129, 134, 189 SE2d 315, 320 (1972) ("oppressive means 'a visible departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.' … It has also been held to mean '… a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its members.'").

6. *See e.g.*, § 5820.11. Oppressed shareholders—Oppressive conduct defined, 12B Fletcher Cyc. Corp. § 5820.11; *Gidwitz v Lanzit Corrugated Box Co*, 20 Ill 2d 208, 170 NE2d 131 (1960); *Bonavita v Corbo*, 300 NJ Super 179, 194, 692 A2d 119, 127 (1996) ("Under that approach, the oppression to which a vulnerable minority shareholder may be subjected is not limited to illegal or fraudulent actions"); *Hager-Freeman v Spircoff*, 229 Ill App 3d 262, 276, 593 NE2d 821, 830 (1992) ("Shareholder oppression has not been limited to actions defined as 'illegal' or 'fraudulent' or necessarily including misapplication of corporate assets or mismanagement of funds.").

7. *Id.*

8. *See e.g., Straka v Arcara Zucarelli Lenda & Assoc CPAs, PC*, 62 Misc 3d 1064, 92 NYS3d 567 (2019) (majority shareholders of closely held corporation engaged in "oppressive actions," which frustrated minority shareholder's reasonable expectations, and could provide basis to dissolve corporation, by failing to treat female minority shareholder with equal dignity and respect as male shareholders forming the majority); *Baur v Baur Farms, Inc*, 832 NW2d 663, 674 (Iowa, 2013) ("majority shareholders act oppressively when, having the corporate financial resources to do so, they fail to satisfy the reasonable expectations of a minority shareholder by paying no return on shareholder equity while declining the minority shareholder's repeated offers to sell shares for fair value."); § 5820.11. Oppressed shareholders—Oppressive conduct defined, 12B Fletcher Cyc. Corp. § 5820.11.

9. *Royals v Piedmont Elec Repair Co*, 137 NC App 700, 705, 529 SE2d 515, 518 (2000).

10. MCL 450.1489; *Franchino v Franchino*, 263 Mich App 172, 186, 687 NW2d 620, 629 (2004).

11. *Frank v Linkner*, 500 Mich 133, 153, 894 NW2d 574, 585 (2017). (Mr. Mantese and Ms. Bolyea represented the plaintiffs in *Linkner* in the Michigan Supreme Court.)

12. *Franchino v Franchino*, 263 Mich App 172, 186, 687 NW2d 620, 629 (2004) (superseded by statute in part: following *Franchino*, the Michigan Legislature amended MCL 450.1489(3) to specifically provide that willfully unfair and oppressive conduct could include termination of employment or other acts that disproportionately interfered with a shareholder's interests).

13. *Trapp v Vollmer*, No 297116 at *3 (Mich Ct App June 16, 2011) (unpublished).

14. *Hickey v Hickey*, 269 Or App 258, 266, 344 P3d 512, 518 (2015); *Kirtz v Grossman*, 463 SW2d 541, 544 (Mo App 1971); *O'Brien v Pearson*, 449 Mass 377, 383, 868 NE2d 118, 124 (2007).

15. *Virgil Kirchoff Revocable Trust Dated 6/19/09*, 482 SW3d 834 (Mo App 2016).

16. *Hickey*, 269 Or App at 266, 344 P3d at 518 (2015).

17. *Meinhard v Salmon*, 249 NY 458, 463–64, 164 NE 545, 546 (1928).

18. *Baron v Pritzker*, 2001 WL 1855054, 52 Pa D & C4th 14 (Pa Common Pleas, 2001).

19. *See also Muellenberg v Bikon Corp*, 143 NJ 168, 180, 669 A2d 1382, 1388 (1996).

20. *Meyer v Brubaker*, No G026361, 2002 WL 110411, at *1 (Cal Ct App, Jan 29, 2002), as mod on denial of reh (Feb 25, 2002).

21. *Twin Bay v Kasian*, 153 AD3d 998, 1003, 60 NYS3d 560, 566 (2017).

22. *Dodge v Ford Motor Co*, 204 Mich 459, 507, 170 NW 668 (1919). *See also Smith v Smith*, No 19-10330,

2020 WL 2308683, *12 (ED Mich May 8, 2020) ("This evidence, viewed as a whole, could support a finding that Defendants acted with the intent to interfere with Martin's interest in receiving dividends. The fact that E&E's profits appear to flow to Wallace, Joan, and their children, to the exclusion of Martin, is suspect. The evidence also suggests that Defendants reduced E&E's net income—by paying Wallace's compensation and rent to the JAW Smith Entities—for the express purpose of avoiding a dividend distribution to Martin. And while starving Martin of any dividend payments, Defendants consistently asked him to sell his shares "at a reasonable price.") (Mr. Mantese and his partner, Ian Williamson, represent the Plaintiff in *Smith v Smith*).

23. *Cooke v Fresh Exp Foods Corp, Inc*, 169 Or App 101, 109, 7 P3d 717, 722 (2000).

24. *See also Muellenberg*, 143 NJ at 180, 669 A2d at 1388 (1996); *Miller v Magline, Inc*, 76 Mich App 284, 306-7, 256 NW2d 761 (1977); *Blankenship v Superior Controls, Inc*, 135 F Supp 3d 608, 620 (ED Mich 2015) (Michigan law) (refusal to declare dividends where company had financial means do to so constitutes shareholder oppression).

25. *See e.g., Muellenberg*, 143 NJ at 180, 669 A2d at 1388 (1996).

26. *See e.g.*, § 4.22 Oppression, Mich Corp L & Prac § 4.22 (A plaintiff has a claim for oppression where "a termination of employment deprived a shareholder of an economic return while the other shareholders received disguised dividends through large salaries and bonuses."); *Knights' Piping, Inc v Knight*, 123 So3d 451 (Miss Ct App 2012), cert denied, 123 So3d 450 (Miss 2013) (Majority shareholder could be held personally liable for his breach of minority shareholder's employment contract with closely held company; majority shareholder unilaterally terminated minority shareholder and offered no legitimate business purpose for the termination; majority shareholder's actions effectively guaranteed that minority shareholder would not receive a return on his interest in the company, as earnings were distributed in the form of salaries and other benefits, rather than dividends.).

27. *Riggle v Seaboard Envelope Co, Inc*, No B253109, 2014 WL 5469928, at *1 (Cal Ct App, October 29, 2014).

28. *Gallagher v McKinnon*, 273 Ga App 727, 731, 615 SE2d 746, 750 (2005).

29. *Knights' Piping, Inc v Knight*, 123 So3d 451, 458 (Miss Ct App, 2012).

30. *See e.g., Riggle*, 2014 WL 5469928, at *1; *In re Dissolution of Clever Innovations, Inc*, 94 AD3d 1174, 1176, 941 NYS2d 777, 780 (2012); *Viener v Jacobs*, 834 A2d 546, 551 (Pa Super Ct, 2003); *Baron v Pritzker*, 52 Pa D & C4th 14 (Pa Common Pleas, 2001).

31. *See e.g., Riggle*, 2014 WL 5469928, at *1 (Cal Ct App, Oct 29, 2014) (minority shareholder locked out of company building); *Hager-Freeman v Spircoff*, 229 Ill App 3d 262, 275, 593 NE2d 821, 829 (1992) (locks changed on building).

32. *See e.g., Madugula v Taub*, 496 Mich 685, 853 NW2d 75 (2014) (oppression may include denying a shareholder access to corporate books and records); *In re Dissolution of Clever Innovations, Inc*, 94 AD3d 1174, 1176, 941 NYS2d 777, 780 (2012) (oppression where majority failed to disclose information); *Viener*, 834 A2d at 551; *Stickley v Stickley*, 43 Va Cir 123 (1997) (oppression where majority stockholder denied minority shareholder access to company records, paid himself excessive compensation, and stacked board with individuals favorable to majority shareholder).

33. *Twin Bay*, 153 AD3d at 1003, 60 NYS3d at 566 (2017).

34. *Royals v Piedmont Elec Repair Co*, 137 NC App 700, 529 SE2d 515 (2000).

35. *Id.* at 708.

36. *Keating v Keating*, No 00748, 2003 WL 23213143 at *1 (Mass Super, Oct 3, 2003).

37. *Muellenberg*, 143 NJ at 180, 669 A2d at 1388 (1996).

38. *See e.g., Blankenship v Superior Controls Inc*, 135 F Supp 3d 608, 618 (ED Mich 2015); *Viener*, 834 A2d at 551 (oppression found where majority shareholder, in retaliation for criticisms made against him, removed minority shareholder from corporate governance, blocked access to company financials, squandered corporate assets and opportunities for personal benefit.).

39. *Hager-Freeman v Spircoff*, 229 Ill App 3d 262, 276, 593 NE2d 821, 830 (1992).

40. 2006 WL 2861875, at *6 (ED Mich Oct 4, 2006).

41. *Id. See also Twin Bay*, 153 AD3d at 1003; 60 NYS3d at 566 (2017).

42. *Berger v Katz*, 2011 WL 3209217 (Mich App 2011).

43. *Madugula v Taub*, 496 Mich 685, 853 NW2d 75 (2014). (Mr. Mantese represented the plaintiff in *Madugula*, both before the Michigan Supreme Court, and on remand, where the trial court made a finding of oppression.)

44. Moll, Douglas, *Reasonable Expectations v Implied-in-Fact Contracts: Is the Shareholder Oppression Doctrine Needed?*, 42 BC L Rev 989, 1018 (2001).

45. O'Neal & Thompson, 2 Close Corp and LLCs: Law and Practice § 9:32 (Rev 3d ed).

46. *See also* Douglas K. Moll, *Shareholder Oppression and "Fair Value": Of Discounts, Dates, and Dastardly Deeds in the Close Corporation*, 54 Duke LJ 293, 318 (2004) ("The most common remedy for oppression … is a buyout of the oppressed investor's stockholdings."); C. Moskow, N. Ankers, *Oppression of Minority Shareholders*, 77 Mich BJ 1088, 1094 (Oct 1998) ("A frequent remedy ordered in dissolution and oppression cases is the buyout of the minority shareholder.").

47. *Meiselman v Meiselman*, 307 SE2d 551, 560 (NC 1983).

48. *Kassab v Kassab*, 2017 WL 3324804 (NYS Ct 2017); *Robinson*, 599 SW3d 167 (Mo 2020).

49. *Balsamides v Protameen Chems, Inc*, 734 A2d 721 (N J 1999).

50. *Schimke v Liquid Dustlayer, Inc*, 2009 WL 3049723 (Mich App 2009).

51. California: *Goles v Sawhney*, 210 Cal Rptr 3d 261 (Cal Ct App 2016) (statutory buyout); *O'Brien v AMBS Diagnostics, LLC*, 2016 WL 94241 (Cal Ct App 2016) (dissolution); *Meyer v Brubaker*, 2002 WL 110411 (Cal Ct App 2002) (dissolution, compensatory damages, punitive damages). Texas: *Ritchie v Rupe*, 443 SW3d 856 (Tex 2014) (rehabilitative receivership); Florida: *Williams v Stanford*, 977 So2d 722 (Fla App 2008) (rescission of a transfer of assets available as a remedy beyond statutory appraisal); *Foreclosure FreeSearch, Inc v Sullivan*, 12 So3d 771 (Fla App 2009) (though relief beyond appraisal is available for breach of fiduciary duty, a minority shareholder cannot prevent the elimination of their interests and prolong corporate strife where plaintiff demands an appraisal). New York: *Straka v Arcara Zucarelli Lenda & Associates CPAs, PC*, 92 NYS3d 567 (NYS Ct 2019) (buyout); *Matter of Kemp & Beatley (Gardstein)*, 473 NE2d 1173 (NY 1984) (buyout); *Twin Bay v Kasian*, 153 AD3d 998 (NYS Ct App Div 2017) (dissolution, rescission of corporate action); *Pappas v Fotinos*, 2010 WL 2891194 (NYS Ct 2010) (dissolution). Pennsylvania: *Viener v Jacobs*, 834 A2d 546 (Pa 2003) ("compensatory damages," in amount of fair value of minority shareholder's interests); *Linde v Linde*, 220 A3d 1119 (Pa 2019) (buyout). Illinois: *Vizcarra v LMR Home Healthcare, Inc*, 2019 WL 2323796 (Ill App 2019) (buyout); *Bone v Coyle Mechanical Supply, Inc*, 2017 WL 2403268 (Ill App 2017) (buyout); *Fleming v Louvers Int'l, Inc*, 2019 WL 4805182 (Ill

App 2019) (retroactive compensation); *Bone v Coyle Mech Supply, Inc*, 2017 WL 2403268 (Ill App 2017) (retroactive compensation). Ohio: *Estate of Schroer v Stamco Supply, Inc*, 482 NE2d 975 (Ohio App 1984) (buyout); *Vontz v Miller*, 111 NE3d 452 (Ohio App 2016) (restoration of voting power); *Edelman v JELBS*, 57 NE3d 246 (Ohio App 2015) (right of inspection); *Franks v Rankin*, 2012 WL 1531031 (Ohio App 2012) (constructive trust); *Edelman v JELBS*, 57 NE3d 246 (Ohio App 2015) (compensatory and punitive damages for excessive compensation of majority shareholders). Georgia: *Gallagher v McKinnon*, 615 SE2d 746 (Ga App 2005) (rescission of issuance of shares, restoration of employment); *Monterrey Mexican Rest of Wise, Inc v Leon*, 638 SE2d 879 (Ga App 2006) (lost profits, deprivation of interest in company). North Carolina: *Vernon v Cuomo*, 2009 WL 690242 (NC Bus Ct 2009) (dissolution with statutory buyout option); *Garlock v Southeastern Gas & Power, Inc*, 2001 WL 34054523 (NC Bus Ct 2001) (dissolution with statutory buyout option); *Brewster v Powell Bail Bonding, Inc*, 2020 WL 1220992 (NC Bus Ct 2020) (allegations sufficient for dissolution if proved at trial). Michigan: *Berger v Katz*, 2011 WL 3209217 (Mich App 2011) (alternative remedies of buyout of oppressing shareholders and receivership available); *Moore v Carney*, 84 Mich App 399 (1978) (buyout). New Jersey: *Parker v Parker*, 2019 WL 1253348 (N J Super Ct App Div 2019) (court-ordered buyout of oppressing shareholder); *Wisniewski v Walsh*, 2013 WL 1296067 (NJ Super Ct App Div 2013) (court-ordered buyout of oppressing shareholder). Virginia: *Colgate v Disthene Grp*, 2012 WL 9391675 (Va Cir Ct 2012) (dissolution); *Stickley v Stickley*, 1997 WL 33622770 (Va Cir Ct 1997) (dissolution). Washington: *Prentiss v Wesspur*, Inc., 1997 WL 207971 (Wash App 1997) (receivership, but company was sold in full to majority shareholder). Massachusetts: *Brodie v Jordan*, 857 NE2d 1076 (Mass 2006) (rejecting a buyout – after this case, court-ordered buyouts no longer allowed in Massachusetts absent a requirement by contract or by company's by-laws); *Donahue v Rodd Electrotype Co of New England, Inc*, 328 NE2d 505 (Mass 1975) (rescission of stock redemption by majority shareholder proposed as alternative to buyout of minority shareholder); *Selmark Assocs, Inc v Ehrlich*, 5 NE3d 923 (Mass 2014) (lost wages); *O'Connor v U S Art Co, Inc*, 2005 WL 1812512 (Mass Super Ct 2005) (lost wages and loss of interest in company).

52. *See* C. Moskow, N. Ankers, *Oppression of Minority Shareholders*, 77 Mich BJ 1088, 1094 (Oct 1998) ("No discount should be applied as a matter of policy in most cases where oppressive conduct is found under section 1489."). In *Franks v Franks*, 330 Mich App 69, 944 NW2d 388 (2019), the Court of Appeals held that trial courts have discretion on whether to impose discounts. Mr. Mantese, Ms. Bolyea, and Mr. Williamson represent the Plaintiffs in that case.

53. Moll, 54 Duke LJ at 328-329; *Goles v Sawhney*, 210 Cal Rptr 3d 261 (Cal App 2016) ("The rule justifying devaluation of minority shares in closely held corporations for their lack of control has little validity when the shares are to be purchased by someone who is already in control of the corporation.").

54. *Matter of Friedman v Beway Realty Corp*, 661 NE2d 972 (NY 1995).

55. *Brown v Allied Corrugated Box Co*, 154 Cal Rptr 170 (1979).

56. *Garlock v Southeastern Gas & Power, Inc*, 2001 WL 34054523 (NC Bus Ct 2001).

57. *Royals v Piedmont Elec Repair Co*, 1999 WL 33545516 (NC Bus Ct 1999).

58. *Royals*, 1999 WL 33545516.

59. *See e.g., Owens v Owens*, 589 SE2d 488 (Va App 2003); *Hoebelheinrich v Hoebelheinrich*, 600 SE2d 152 (Va App 2004).

60. *See e.g., Murchie v Sorensen*, 2015 WL 728310 (Ill App 2015) (fair value does not include discounts).

61. *See e.g., Murchie v Sorensen*, 2015 WL 728310 (Ill App 2015); *In re Dino Rigoni Intentional Grantor Tr for Benefit of Rajzer*, 2015 WL 4255417 (Mich App 2015); *Matthew G Norton Co v Smyth*, 51 P3d 159 (Wash App 2002).

62. *Prentiss v Wesspur, Inc*, 1997 WL 207971 (Wash App 1997).

63. *Parker v Parker,* 2019 WL 1253348 (NJ Super Ct App Div 2019).

64. *See e.g., Meyer v Brubaker*, No G026361, 2002 WL 110411 (Cal Ct App, Jan 29, 2002), as mod on denial of reh (Feb 25, 2002) citing *Jones v H F Ahmanson & Co*, 1 Cal 3d 93, 460 P2d 464 (1969).

Gerard V. Mantese is a partner at Mantese Honigman, PC, a national firm which handles complex business litigation in state and federal courts around the country. He has handled a significant number of oppression cases, both for plaintiffs and defendants, and is a leader in this area of law.

Fatima M. Bolyea is an associate attorney at Mantese Honigman, PC. Her practice includes complex commercial litigation, shareholder and partnership disputes, business transactions, and health care law.